

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director, Office of Small Business

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: July 19, 2021

SUBJECT: AMENDED LEGISLATION

On July 14, 2021, the Board of Supervisors' Budget and Finance Committee amended the following legislation, introduced by Supervisor Hillary Ronen:

File No. 210741-2

Ordinance waiving certain first-year permit, license, and business registration fees for businesses that either (1) commence engaging in business within the City from November 1, 2021 through October 31, 2022, have estimated first-year San Francisco gross receipts of \$2,000,000 or less, have a registered business location that is for ground floor commercial use and not formula retail use, and have gross receipts in the next three tax years of \$10,000,000 or less, or (2) open a new business location for ground floor commercial use and not formula retail use, reported San Francisco gross receipts of \$2,000,000 or less on its most recent return, and have gross receipts in the next three tax years of \$10,000,000 or less; and refunding any waived fees paid to the City.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

1 [Waiver of Permit, License, and Business Registration Fees for Certain New Small
2 Businesses Locations]

3 Ordinance waiving certain first-year permit, license, and business registration fees for
4 businesses that either (1) commence engaging in business within the City from
5 November 1, 2021 through October 31, 2022, have estimated first-year San Francisco
6 gross receipts of \$2,000,000 or less, and have a registered business location that is for
7 storefront ground floor commercial use and not formula retail uses, and have gross
8 receipts in the next three tax years of \$10,000,000 or less, or (2) open a new business
9 location for ground floor commercial use and not formula retail use, reported
10 San Francisco gross receipts of \$2,000,000 or less on its most recent return, and have
11 gross receipts in the next three tax years of \$10,000,000 or less; and refunding any
12 waived fees paid to the City.

13
14 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
15 **Additions to Codes** are in *single-underline italics Times New Roman font*.
16 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
17 **Board amendment additions** are in double-underlined Arial font.
18 **Board amendment deletions** are in ~~Arial font~~.
19 **Asterisks (* * * *)** indicate the omission of unchanged Code
20 subsections or parts of tables.

21 Be it ordained by the People of the City and County of San Francisco:

22 Section 1. Background, Purpose, and Findings.

23 (a) San Francisco is home to thousands of small businesses, employing hundreds of
24 thousands of workers. Small businesses are the lifeblood of our neighborhoods and our
25 communities. While many have managed to stay afloat during the COVID-19 pandemic and

1 economic downturn, adjust to quickly shifting guidelines and practices, and creatively promote
2 new ways of doing business, many have not, and have not survived.

3 (b) The City seeks a robust and equitable recovery that revives the small business
4 sector, gets service and retail workers back to work, reassures San Franciscans that
5 neighborhood corridors are still there for them to gather, shop, and dine, and attracts visitors
6 to enjoy all that is special and unique about our City.

7 (c) In March 2021, the San Francisco Budget and Legislative Analyst issued a report
8 estimating unpaid commercial rent in San Francisco through December 2020 due to the
9 COVID-19 pandemic and related public health orders. The report estimated that, while
10 non-payment of rent from retail chains had recovered slightly from spikes early in the
11 pandemic, between 52% and 63% of small local businesses had not been able to pay rent in
12 full and that unpaid commercial rent ranged from \$172 million to \$404 million, with almost all
13 of that – 89% to 98% – owed by storefront retail, services, restaurants, and bars. Commercial
14 eviction protections, lease renegotiations, and other strategies will allow some, but not all, of
15 these small businesses to continue to operate.

16 (d) Prior to the pandemic, neighborhoods across the City were already seeing a
17 proliferation of vacant storefronts. To ensure vibrant commercial corridors, the City must
18 focus not only on sustaining existing businesses but also on addressing vacancies. In order
19 to lower the barriers that new businesses face before they open their doors, San Francisco
20 voters passed Proposition H in November 2020, a package of commercial permit streamlining
21 changes, and pending legislation would expand those streamlining changes. To further lower
22 those barriers, complement the permit process changes, remove the financial barrier that City
23 fees create for prospective small business owners, and support a full and fast recovery of the
24 City's commercial corridors and small businesses, this ordinance will waive ~~City~~ certain City
25 first-year permit, initial license, and initial business registration fees for many new small

1 businesses and certain first-year permit and initial license fees for many small businesses that
2 open a new ground floor location.

3 (e) Small businesses are an effective economic development pathway for communities
4 of color and an alternative to minimum wage jobs for working class San Franciscans.
5 According to a 2015 paper published by the Brookings Institution, “Business ownership can
6 catalyze social mobility. . . . African American entrepreneurs are both more likely to move into
7 higher income groups than are African American nonentrepreneurs, . . [and] successful
8 entrepreneurship is correlated with wealth, savings, job satisfaction, and economic mobility.”
9 A recent article by What Works Cities stated, “[S]mall business entrepreneurship has long
10 served as an important vehicle of economic mobility for families. In many immigrant
11 communities and communities of color, owning a business and hiring neighbors and
12 community members is a way to build wealth for their families and create vibrant
13 communities.” Among its benefits, this ordinance will encourage and support small business
14 entrepreneurship in immigrant communities and communities of color, though its reach will be
15 broader and its impact will be across-the-board and citywide.

16 (f) The Board of Supervisors finds that it is reasonable to waive first-year permit,
17 license, and business registration fees for certain ~~new~~ small businesses whose business
18 location is for ~~storefront~~ ground floor commercial use and not Formula Retail uses. The Board
19 of Supervisors further finds that while small businesses with one or few locations have been
20 especially impacted by the economic downturn, Formula Retail businesses, in general, are
21 better positioned to navigate the economic downturn due to the fact that Formula Retail
22 establishments have multiple locations.

23
24 Section 2. Definitions.

25 For purposes of this ordinance, the following terms shall have the following meanings:

1 "Business Registration Certificate" means a "registration certificate," as defined in
2 Section 852.2 of Article 12 of the Business and Tax Regulations Code.

3 "Business Registration Fee" means the tax imposed under Article 12 of the Business
4 and Tax Regulations Code.

5 "City" means the City and County of San Francisco.

6 "City Departments" means the departments and agencies that issue any permit,
7 license, or Business Registration Certificate, the fees for which are subject to waiver under
8 Sections 3(a) and 3(b) of this ordinance, including but not limited to the Planning Department,
9 Department of Building Inspection, Fire Department, Department of Public Works, Department
10 of Public Health, Police Department, Public Utilities Commission, Entertainment Commission,
11 Office of Cannabis, and Office of the Treasurer and Tax Collector.

12 "Commercial Use" means any of the following uses: Sales and Services, Retail;
13 Entertainment, Arts and Recreation Use; or Social Service or Philanthropic Facility, as those
14 terms are defined in Section 102 of the Planning Code; or COVID-19 Relief and Recovery use
15 as defined in Section 205.7(b) of the Planning Code. "Commercial Use" shall not include any
16 Formula Retail use as defined in Section 303.1(b) of the Planning Code. For purposes of this
17 Section 2, references to the Planning Code are to that Code as of November 1, 2021.

18 "Gross Receipts Tax Return" means the return reporting taxes imposed by
19 Article 12-A-1 of the Business and Tax Regulations Code and filed in accordance with
20 Article 6 of that Code.

21 "License Fees" means all license fees payable to the City, including but not limited to
22 fees payable to the City under Sections 76.1 and 76.2 of Article 2 of the Business and Tax
23 Regulations Code, relating to the operation of a business at a location that is for
24 ~~Storefront~~ ground floor Commercial Use, and not including fees for licenses under
25 Chapter 94A of the Administrative Code, as may be amended from time to time.

1 "Permit Fees" means the fees payable to the City upon application for and issuance of
2 any permit, including but not limited to permits subject to Article 1 of the Business and Tax
3 Regulations Code, for the establishment, modification, and/or operation of a ~~Storefront~~ground
4 floor Commercial Use, and not including fees for permits under Chapter 94A of the
5 Administrative Code, as may be amended from time to time.

6 "Person" has the meaning set forth in Section 6.2-15 of Article 6 of the Business and
7 Tax Regulations Code.

8 ~~"Public Right of Way" means the dedicated public alleys, boulevards, courts, lanes,
9 roads, sidewalks, spaces, streets, and ways within the City, which are under the permitting
10 jurisdiction of the Department of Public Works.~~

11 "Qualified Business" means either a Qualified New Business or a Qualified Business
12 With New Location.

13 "Qualified Business With New Location" means a Person that (a) commenced business
14 within the City before November 1, 2021 and holds a valid Business Registration Certificate,
15 (b) commences business at a new business location that is for ground floor Commercial Use
16 on or after November 1, 2021 and on or before October 31, 2022, as reported to the Tax
17 Collector, and (c) reported \$2,000,000 or less in annual San Francisco Gross Receipts or
18 estimated San Francisco Gross Receipts on its most recently filed Gross Receipts Tax
19 Return, application for a Registration Certificate, or renewal of a Registration Certificate.

20 "Qualified New Business" means a Person that (1) applies for a Business Registration
21 Certificate in accordance with Section 856 of Article 12 of the Business and Tax Regulations
22 Code indicating its date of commencing business within the City on or after November 1, 2021
23 and on or before October 31, 2022, (2) has \$2,000,000 or less in estimated San Francisco
24 Gross Receipts for the calendar year in which the Person commences business within the
25

1 City, and (3) has a registered business location that is for ~~Storefront~~ground floor Commercial
2 Use as reported on the Person's application for a Business Registration Certificate.

3 "San Francisco Gross Receipts" has the same meaning as used in Section 855 of
4 Article 12 of the Business and Tax Regulations Code.

5 ~~"Storefront Commercial Use" means the commercial use of the ground floor of any~~
6 ~~portion of a building or structure, where such ground floor is adjacent or tangent to a Public~~
7 ~~Right of Way, other than Formula Retail uses as defined in Section 303.1(b) of the Planning~~
8 ~~Code.~~

9 "Tax Collector" has the meaning set forth in Section 6.2-19 of Article 6 of the Business
10 and Tax Regulations Code.

11 "Tax Year" has the meaning set forth in Section 6.2-20 of Article 6 of the Business and
12 Tax Regulations Code.

13
14 Section 3. Waiver of Certain Permit, License, and Business Registration Fees.

15 (a) All Permit Fees, initial License Fees, and the initial Business Registration Fee shall
16 be waived for each Qualified New Business. The waiver in this Section 3(a) shall apply to
17 applications for a permit, initial license, or initial Business Registration Certificate filed by the
18 Qualified New Business on or after November 1, 2021 and on or before October 31, 2022.
19 The waiver in this Section 3(a) shall not apply to (1) any fees for the renewal of a license or
20 Business Registration Certificate, and (2) any fees collected by the City on behalf of any
21 federal, state, or other local government or agency.

22 (b) All Permit Fees and initial License Fees shall be waived for each Qualified
23 Business With New Location. The waiver in this Section 3(b) shall apply to applications for a
24 permit or initial license filed by the Qualified Business With New Location on or after
25 November 1, 2021 and on or before October 31, 2022, and shall apply only to Permit Fees

1 and initial License Fees with respect to the new business location that is for ground floor
2 Commercial Use opened by that Qualified Business With New Location on or after
3 November 1, 2021 and on or before October 31, 2022. The waiver in this Section 3(b) shall
4 not apply to (1) any fees for the renewal of a license, and (2) any fees collected by the City on
5 behalf of any federal, state, or other local government or agency.

6 (c) (1) If the Tax Collector determines, based on any information in the Tax
7 Collector's possession or that may come into the Tax Collector's possession, that a Person
8 claiming a waiver under Section 3(a) or (3)(b) of this ordinance was not entitled to that waiver,
9 the Tax Collector shall issue a determination to such Person voiding the waiver, and
10 demanding payment of the unpaid Permit Fees, License Fees, and/or Business Registration
11 Fee, plus penalties and interest accruing on such fees under Business and Tax Regulations
12 Code Section 6.17-1.1, calculated based on the original due date of the applicable fee. Such
13 notice shall be issued under the rules in Section 6.11-2(b) and (c) of the Business and Tax
14 Regulations Code.

15 (2) Except in the case of fraud, or in the case of an intent to evade this
16 ordinance, the Business and Tax Regulations Code, or rules and regulations issued or
17 promulgated by the Tax Collector, in all of which cases there is no statute of limitations, every
18 Tax Collector determination under Section 3(c)(1) shall be served within three years after the
19 date that the Person claimed the waiver under Section 3(a) or (3)(b). The Person may agree
20 in writing to extend this three-year period for service of a notice of a determination.

21 (3) All Tax Collector determinations under this Section 3(c) shall be final and
22 are immediately due and payable to the Office of the Treasurer and Tax Collector. Any
23 Person that wishes to challenge a Tax Collector determination under this Section 3(c) must
24 pay the taxes, penalties, and interest due and file a claim for refund with the Controller under
25 Government Code Sections 900 et seq.

1 (d) (1) If a Qualified Business has more than \$10,000,000 in San Francisco Gross
2 Receipts in the calendar year of, or in any Tax Year during the three full-year Tax Years
3 following, the date the Qualified Business commenced business within San Francisco or
4 opened a new business location for ground floor Commercial Use, as applicable, any waiver
5 under Section 3(a) or Section 3(b) of this ordinance shall be revoked retroactively for that
6 Qualified Business.

7 (2) The Tax Collector shall issue a determination that the Qualified Business
8 exceeded the \$10,000,000 threshold in Section (3)(d)(1) of this ordinance, which
9 determination may be based on the Qualified Business's Gross Receipts Tax Return or any
10 other information in the Tax Collector's possession or that may come into the Tax Collector's
11 possession. Such notice shall be issued under the rules in Section 6.11-2(b) and (c) of the
12 Business and Tax Regulations Code.

13 (3) Except in the case of fraud, or in the case of an intent to evade this
14 ordinance, the Business and Tax Regulations Code, or rules and regulations issued or
15 promulgated by the Tax Collector, or in the case of failure to file a Gross Receipts Tax Return
16 for the Tax Year in which the Qualified Business exceeded the \$10,000,000 threshold, in all of
17 which cases there is no statute of limitations, every Tax Collector determination under this
18 Section 3(d) shall be served within three years after the date that a Gross Receipts Tax
19 Return was due for the Tax Year in which the Qualified Business exceeded the \$10,000,000
20 threshold or three years after that return was filed for that period, whichever is later. The
21 Qualified Business may agree in writing to extend this three-year period for service of a notice
22 of a determination.

23 (4) A Qualified Business may petition the Tax Collector for a redetermination of
24 the determination issued under this Section 3(d) under the rules in Business and Tax
25 Regulations Code Sections 6.13-1 through 6.13-6. The full amount of any Permit Fees,

1 License Fees, and/or Business Registration Fee waived under Section 3(a) or Section 3(b)
2 and revoked under this Section 3(d) shall be due and payable without interest by the Qualified
3 Business to the Office of the Treasurer and Tax Collector upon the later of the expiration of
4 the period for filing a petition for redetermination under Business and Tax Regulations Code
5 Section 6.13-1, and the date the Tax Collector's decision on a timely filed petition for
6 redetermination becomes final under Business and Tax Regulations Code Section 6.13-4.

7 (5) A Qualified Business that fails to pay the Permit Fees, License Fees, and/or
8 Business Registration Fee due and payable by the due date under Section 3(d)(4) shall be
9 treated as delinquent and subject to the penalties and interest in Business and Tax
10 Regulations Code Section 6.17-1.1, calculated commencing on the payment due date under
11 Section 3(d)(4).

12 ~~(b) No penalties shall be imposed on a Qualified New Business with respect to the~~
13 ~~payment of any fees waived under Section 3(a). A misrepresentation or misstatement by any~~
14 ~~Person regarding eligibility for the waiver authorized by Section 3(a) that results in the~~
15 ~~underpayment of any Permit Fees, License Fees, and/or the Business Registration Fee shall~~
16 ~~be subject to the penalties applicable to those fees.~~

17 ~~(e)~~ City Departments and the Tax Collector shall implement the waiver of fees under
18 Section 3(a) and Section 3(b) and the refunding of any fees under Section 4 of this ordinance.

19
20 Section 4. Refund of Waived Fees Paid to City.

21 Any fee waived under Section 3(a) or Section 3(b) of this ordinance that has been
22 collected by the City shall be refunded, without interest, upon request of the payer of the fee.
23 Any refund request under this Section 4 must be filed in writing with the Tax Collector within
24 one year of payment of the fee.

1 Section 5. Effect of Fee Waiver.

2 (a) Notwithstanding Article 1 and Article 2 of the Business and Tax Regulations Code,
3 the failure of a Person to pay any Permit Fees and/or License Fees waived under Section 3(a)
4 and Section 3(b) of this ordinance shall not preclude the Person from continuing to do or
5 perform the act or carry on the business, trade, profession, or calling for which City law
6 requires the permit or license.

7 (b) The waiver of a Person's Business Registration Fee under Section 3(a) of this
8 ordinance shall not relieve a Person from the registration and other applicable requirements
9 under Articles 6 and 12 of the Business and Tax Regulations Code, except for the payment of
10 that Person's waived Business Registration Fee. If a Person satisfies the registration and
11 other applicable requirements under Articles 6 and 12 of the Business and Tax Regulations
12 Code, except for the payment of any waived Business Registration Fee, such Person shall be
13 treated for all purposes as if they had paid the Business Registration Fee.

14
15 Section 6. Information Collection and Reporting.

16 The Tax Collector shall collect information on the number of Qualified ~~New~~-Businesses
17 by supervisorial district that received a waiver of one or more fees under Section 3(a) and
18 Section 3(b) of this ordinance, the business activity codes under the North American Industry
19 Classification System of those Qualified ~~New~~-Businesses by supervisorial district, and the
20 fees and total amounts waived in the aggregate. The Tax Collector shall submit a report to
21 the Board of Supervisors no later than ~~April~~ June 15, 2022 on the information collected for the
22 ~~four~~ six-month period, November 1, 2021 through ~~February 28~~ April 30, 2022.

1 Section 7. Severability.

2 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
3 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
4 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
5 remaining portions or applications of this ordinance. The Board of Supervisors hereby
6 declares that it would have passed this ordinance and each and every section, subsection,
7 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
8 whether any other portion of this ordinance or application thereof would be subsequently
9 declared invalid or unconstitutional.

10
11 Section 8. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: /s/
19 KERNE H. O. MATSUBARA
Deputy City Attorney

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LEGISLATIVE DIGEST
(Amended in Committee 7/14/2021)

[Waiver of Permit, License, and Business Registration Fees for Certain New Small Business Locations]

Ordinance waiving certain first-year permit, license, and business registration fees for businesses that either (1) commence engaging in business within the City from November 1, 2021 through October 31, 2022, have estimated first-year San Francisco gross receipts of \$2,000,000 or less, have a registered business location that is for ground floor commercial use and not formula retail use, and have gross receipts in the next three tax years of \$10,000,000 or less, or (2) open a new business location for ground floor commercial use and not formula retail use, reported San Francisco gross receipts of \$2,000,000 or less on its most recent return, and have gross receipts in the next three tax years of \$10,000,000 or less; and refunding any waived fees paid to the City.

Existing Law

Persons commencing business within the City must obtain a registration certificate from the Tax Collector and pay an initial registration fee covering the period from the commencement date through the next June 30th. They must annually renew their registrations and pay a registration renewal fee for the upcoming fiscal year beginning July 1. They pay fees for the application and/or issuance of various City permits, including, for example, building permits and permits that are required to operate their business. They also pay initial license fees to operate their business and pay license renewal fees that generally are due and payable to the Tax Collector on March 31 of each year.

Amendments to Current Law

This ordinance would waive initial registration fees, initial license fees, and permit fees for each qualified new business where the applications for the business registration certificate, initial license, or permit are filed by the qualified new business on or after November 1, 2021, and on or before October 31, 2022. A qualified new business is a business that: (1) applies for a registration certificate in accordance with Section 856 of Article 12 of the Business and Tax Regulations Code indicating its date of commencing business within the City on or after November 1, 2021 and on or before October 31, 2022; (2) has \$2,000,000 or less in estimated San Francisco gross receipts for the calendar year in which the business commences within the City; and (3) has a registered business location that is for one of the following ground floor commercial uses (excluding formula retail uses): retail sales and services; entertainment, arts, and recreation; or a social service or philanthropic facility.

This ordinance would also waive the initial license fees and permit fees for each qualified business with a new location where the applications for the initial license or permit are related to the new location and are filed by the qualified business with a new location on or after

November 1, 2021, and on or before October 31, 2022. A qualified business with a new location is a business that: (1) commenced business within the City before November 1, 2021 and holds a valid business registration certificate; (b) commences business at a new business location on or after November 1, 2021 and on or before October 31, 2022, that is for one of the following ground floor commercial uses (excluding formula retail uses): retail sales and services; entertainment, arts, and recreation; or a social service or philanthropic facility; and (c) reported \$2,000,000 or less in annual San Francisco Gross Receipts or estimated San Francisco Gross Receipts on its most recently filed gross receipts tax return, application for a registration certificate, or renewal of a registration certificate.

Fees charged for other than registration certificates, permits, and initial licenses (e.g., impact fees) are not subject to waiver under this ordinance. The waiver for qualified new businesses and qualified businesses with a new location also would not apply to: (1) any permit issued under the Places for People Program or, if adopted, the Shared Spaces Program, under Chapter 94A of the Administrative Code; (2) the renewal of any license or registration certificate; and (3) any fees collected on behalf of any federal, state, or other local government agency. This ordinance would refund any waived fees paid to the City, upon written request of the qualified new business filed within one year of payment of the fee.

If a business originally subject to waiver has more than \$10,000,000 in San Francisco gross receipts in the calendar year of, or in any calendar year during the three full-year calendar years following, the date the business commenced business in San Francisco or opened a new qualified business location in San Francisco, any waiver under this ordinance will be revoked retroactively, and the business will be required to remit to the City all waived amounts.

Committee Amendments

The amendments in committee on July 14, 2021, did the following:

- Expanded the locations qualifying for the waiver to include ground floor businesses that are not adjacent to a public right-of-way;
- Expanded the waivers to include certain existing small businesses that open a new qualified location, in addition to new small businesses;
- Limited the types of business locations qualifying for the waiver to the following uses (excluding formula retail uses): retail sales and services; entertainment, arts, and recreation; or a social service or philanthropic facility; and
- Added provisions revoking previously granted waivers for businesses with more than \$10,000,000 in San Francisco gross receipts in the calendar year of, or in any calendar year during the three full-year tax years following, the date the business commenced in San Francisco or opened a new qualified business location in San Francisco, and requiring such businesses to pay back any such previously waived fees.

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